

Notice of Rulemaking Hearing
Department of Commerce and Insurance
Tennessee Auctioneer Commission

There will be a hearing before the Tennessee Auctioneer Commission to consider the promulgation of rules, amendments of rules and repeals of rules pursuant to T.C.A. §62-19-106(b). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §4-5-204, and will take place in Room 160 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. (Central Time) on 26th day, March, 2007.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Commerce and Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 and (615) 741-6500.

For a copy of this Notice of Rulemaking Hearing, contact Lynn McGill, 500 James Robertson Parkway, 6th Floor, Nashville, Tennessee 37243, Tennessee Auctioneer Commission, (615) 741-3600.

Substance of Proposed Rules

Chapter 0160-1
Regulations of Auctioneers

Amendments

Rule 0160-1-.01 Duties of Auctioneer is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0160-1-.01 Duties of Auctioneer. The Auctioneer shall be responsible for the advertising and management of the sale and account for all proceeds therefrom and shall, with verification in the form of his or her signature, issue a closing statement to the seller or sellers.

Authority: T.C.A. §62-19-106(b).

Rule 0160-1-.06 Dates of Examinations is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0160-1-.06 Dates of Examinations. The Commission shall, in conjunction with the current contractor, administer the examination on the dates provided by the contractor five (5) days a week with the exception of holidays.

Authority: T.C.A. §62-19-106(b).

Rule 0160-1-.08 Forfeiture of Fees is repealed.

Authority: T.C.A. §62-19-106(b).

Rule 0160-1-.09 Assistants is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0160-1-.09 Assistants. Any person acting as ringman, or bid spotter, at personal property sales, such as cattle sales, auction houses, auto sales, and real estate sales shall not be required to be licensed under this act and shall be directly responsible to the auctioneer in charge. The principal auctioneer shall be responsible for that person's conduct and representation.

Authority: T.C.A. §62-19-106(b).

Rule 0160-1-.10 Auction Schools is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0160-1-.10 Auction Schools.

- (1) In order to be approved by the Auctioneer Commission (for the purpose of T.C.A. § 62-19-111), an auction school must:
 - (a) execute an application on the form prescribed by the Commission, accompanied by a description of the school's curriculum;
 - (b) have a permanent business location;
 - (c) conduct a minimum of eighty (80) hours of instruction, including at least forty (40) hours under the supervision of a licensed auctioneer with at least five (5) years of experience;
 - (d) for applicants applying for upgrade from apprentice to auctioneer, conduct a minimum of thirty (30) hours of instruction, including at least fifteen (15) hours instruction given by a licensed auctioneer with at least five (5) years of experience;
 - (e) maintain a pass/fail grading system, with a supplementary "good/fair/poor" designation;
 - (f) provide instruction in public speaking, bid calling, sales management, advertisements, contracts, closing statements, license law, uniform commercial codes, bulk sales and firearms;
 - (g) demonstrate every two (2) years that it has met the requirements of the Tennessee Higher Education Commission (or the equivalent thereof in another state).

Authority: T.C.A. §62-19-106(b).

Rule 0160-1-.14 Fees is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0160-1-.14 Fees.

- (1) Each application for licensure shall be accompanied by a non-refundable application fee of fifty dollars (\$50.00).
- (2) Fees for the issuance of initial licensure and the renewal thereof shall be as follows:

Auctioneer License.....one hundred seventy-five dollars (\$175.00)

Apprentice Auctioneer License.....one hundred twenty-five dollars (\$125.00)
Principal Office Firm License.....one hundred twenty-five dollars (\$125.00)
Gallery License.....one hundred seventy-five dollars (\$175.00)
Auction Firm Branch License..... seventy-five dollars (\$75.00)
Gallery Branch License..... seventy-five dollars (\$75.00)
Auctioneer Education and Recovery Account Fee.....fifty dollars (\$50.00)

Licenses are valid for two (2) years from the date of their issuance and may be renewed within the sixty (60) days immediately preceding their date of expiration.

- (3) A licensee shall pay a one-time fee of one hundred fifty dollars (\$150.00) for the retirement of an auctioneer or apprentice auctioneer license. An application or activation of a retired license shall be accompanied by an application fee of one hundred dollars (\$100.00), the applicable license fee and the Auctioneer Education and Recovery Account fee.
- (4) An applicant who fails a license examination shall pay a fee as set by contract with the Auctioneer Commission license examination administrator for each subsequent re-examination.
- (5) The fee for a replacement license and pocket card is thirty-five dollars (\$35.00).
- (6) Any notification of change of information pursuant to rule 0160-1-.24 made to the Commission more than sixty (60) days after the effective date of the new information shall result in a penalty of one hundred dollars (\$100.00).

Authority: T.C.A. §§62-19-106(b), 62-19-111 and 62-19-116.

Chapter 0160-3 Continuing Education

Amendments

Rule 0160-3-.03 Basic Requirements is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0160-3-.03 Basic Requirements.

- (1) All licensees including auctioneer licensees, apprentice auctioneer licensees, gallery licensees, as well as non-auctioneer firm owners, except as otherwise provided by T.C.A. §62-19-106(e) and these rules, must obtain six (6) hours of continuing education per renewal cycle in order to renew a license, except as provided for in T.C.A. §62-19-106(e)(2).
- (2) A licensee attending a continuing education program shall provide the licensee's name and license number(s) to the sponsor in writing on the sponsor's registration form for any Commission-approved continuing education program. If the licensee fails to follow the aforementioned requirement, the licensee shall not receive credit for attending the program from the Commission.
- (3) A licensee who attends any continuing education program or engages in other continuing education activity which has not been approved by the Commission shall not be awarded credit by the Commission towards the continuing education requirement.

- (4) A licensed auctioneer or apprentice auctioneer who also is the holder of a firm license or gallery license need only obtain the number of hours of continuing education for the renewal of one (1) license in order for the Commission to renew both the auctioneer or apprentice auctioneer license and the firm license.
- (5) Non-auctioneer gallery and non-auctioneer firm owners must obtain six (6) hours of continuing education per renewal cycle in order to renew their license, as set forth in Rule 0160-3-.03(1), except as provided for in T.C.A. § 62-19-106(e)(2).

Authority: T.C.A. §62-19-106(b) and (e).

Paragraph (3) of rule 0160-3-.04 Qualifying Programs is amended by deleting the text of the paragraph and substituting the following language so that, as amended, paragraph (3) of rule 0160-3-.04 shall read:

- (3) Formal programs requiring attendance may only be considered for approval by the Commission if:
 - (a) an outline is prepared and preserved;
 - (b) the unit program is at least two (2) hours (1 credit hour = 50 minutes) in length;
 - (c) the program is conducted by an instructor, discussion leader or lecturer qualified in the opinion of the Commission by either education or experience or both; and
 - (d) a record of registration and attendance is maintained and certified by the signatures of an authorized representative of the organization sponsoring the program.

Authority: T.C.A. §62-19-106(b) and (e).

Paragraph (10) of rule 0160-3-.04 Qualifying Programs is amended by deleting the text of the paragraph and substituting the following language so that, as amended, paragraph (10) of rule 0160-3-.04 shall read:

- (10) Notwithstanding any other provisions of these rules to the contrary the requirements of Rule 0160-3-.05, Sponsors, and paragraphs (2) and (3) of this rule shall not apply to sponsors the Commission determines are nationally recognized providers of auctioneer education. Those sponsors shall comply with the provisions of Rule 0160-3-.07, Control and Reporting System. The failure of such a sponsor to report as required shall result in the Commission's refusal to grant credit for attendance at programs of such sponsors and/or the suspension of the sponsor's recognition by the Commission under this paragraph. For purposes of this paragraph, the nationally recognized provider of auctioneer education is the National Auctioneer Association.

Authority: T.C.A. §62-19-106(b) and (e).

Paragraph (1) of rule 0160-3-.05 Sponsors is amended by deleting the text of the paragraph and substituting the following language so that, as amended, paragraph (1) of rule 0160-3-.05 shall read:

- (1) The sponsor of any continuing education program shall apply for approval of such program by filing the form prescribed by the Commission at least thirty (30) days prior to the program being offered for continuing education credit. Such form shall include certification that the program sponsored will conform to the provisions of this chapter. The criteria the Commission will use to determine whether a program is acceptable and how many hours of credit will be awarded for continuing education activity is established in Rule 0160-3-.04 Qualifying Programs.

Authority: T.C.A. §62-19-106(b) and (e).

Rule 0160-3-.07 Control and Reporting System is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Rule 0160-3-.07 Control and Reporting System.

- (1) Within twenty (20) days of the completion of a sponsor's program, the sponsor shall submit both the original report and all error reports identifying the program and the licensees who attended by either:
 - (a) transmitting the information electronically via computer;
 - (b) supplying the information in any State approved data format with a label identifying the sponsor's name and program name.
- (2) An information data file including the information required by paragraph one (1) of this rule shall be provided in the State approved format.
- (3) The information data file shall include the following data elements:
 - (a) program name;
 - (b) sponsor name;
 - (c) date program was conducted;
 - (d) number of hours the Commission has determined would be awarded to a person attending the program; and
 - (e) name and license number of all attending licensees.
- (4) Upon receiving a written request from the Commission, a sponsor shall provide the Commission with a copy of the registration form required by paragraph (2)(c) of Rule 0160-3-.05, Sponsors.
- (5) Should any continuing education credit hours claimed in a submission by a sponsor be disapproved, the Commission shall cause notification be sent to the sponsor in writing of the reason for disapproval and allow a specified time for correction or explanation of any deficiency.

Authority: T.C.A. §62-19-106(b) and (e).

I certify that this is an accurate and complete representation of the intent and scope of the rulemaking proposed by the Tennessee Auctioneer Commission.

Bethany A. Heuer
Staff Attorney

Subscribed and sworn to before me this _____ day of _____, 2007.

Notary Public

My Commission expires on the _____ day of _____, _____.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the _____ day of _____, 2007.

Riley C. Darnell
Secretary of State

By:_____